

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 1992, I caused copies of the foregoing " Petition For Partial Rejection, Suspension or Investigation" of Aeronautical Radio, Inc., to be mailed via first-class, postage prepaid, to the following:

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**TAB B**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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NOV 25 1991

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Competition in the Interstate ) CC Docket No. 90-132  
Interexchange Marketplace )  
 )

To: The Commission

**PETITION FOR CLARIFICATION  
AND RECONSIDERATION**

Aeronautical Radio, Inc. ("ARINC"), by its attorneys and pursuant to Section 1.429 of the FCC's rules,<sup>1</sup> hereby petitions the Commission to clarify and reconsider its Report and Order in the above-referenced matter.<sup>2</sup> In that Order, the FCC further streamlined the regulation of many of AT&T's business services, yet retained price cap safeguards to protect captive ratepayers of monopoly analog private line services.

As discussed below, however, AT&T has taken advantage of various ambiguities in the Report and Order to increase rates for certain private analog service offerings by as much as 500%, thereby effectively circumventing the FCC's requirements. The agency should therefore clarify or reconsider its decision by specifying the rate elements to be

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<sup>1</sup> 47 C.F.R. § 1.429 (1990).

<sup>2</sup> Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, released September 16, 1991 ("Report and Order").

protected from such price gouging and manipulation. In light of AT&T's actions, the FCC also should establish service bands within the analog private line basket to prevent rate cross-subsidization detrimental to analog service subscribers.

A. INTRODUCTION AND BACKGROUND

ARINC is the communications company of the air transport industry and is owned and operated by the airlines and other aircraft operators. ARINC provides the civil aviation community with a variety of voice and data telecommunications services on a not-for-profit basis and represents industry interests in regulatory and other forums. ARINC and the airlines rely heavily upon private line services to support their nationwide and worldwide communications systems. Accordingly, ARINC and the airlines are significantly affected by the regulatory decisions made in this proceeding.

In its Report and Order, the Commission concluded that further streamlining of many of AT&T's business services would enhance competition and, thereby, reduce rates for the public. The FCC recognized, however, that it could not streamline the regulation of private analog circuits because of the lack of competition in that market. Further deregulation of analog private lines, the agency reasoned,

could lead to increased prices contrary to its goals.<sup>3</sup> The Commission therefore retained those services under full price cap regulation in a revised Basket 3.

The day after the FCC's Report and Order was released, however, AT&T filed analog voice grade tariff revisions to raise many of its rates substantially.<sup>4</sup> For example, AT&T proposed to raise its analog multipoint charge from \$3.00 to \$15.00 per termination, an increase of 500%,<sup>5</sup> and to increase the charges for a private line service transfer arrangement from \$29.50 to \$50.00 per month, an increase of approximately 66%.<sup>6</sup> Moreover, although AT&T proposed to decrease per miles charges for interoffice circuits,<sup>7</sup> it would increase the fixed monthly charges for those circuits from \$75.72 to \$175.22 for the 1-50 mileage band and from \$156.22 to \$175.22 for the 51-100 mileage band.<sup>8</sup> Thus, changes in the charges for interoffice circuits would vary, but in some cases would increase by as much as 125%.

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<sup>3</sup> Id. at ¶ 81.

<sup>4</sup> AT&T Communications, Transmittal Nos. 3464 and 3465, filed Sept. 17, 1991.

<sup>5</sup> Id. at Sections 8.2.5, 16.2.4.

<sup>6</sup> Id. at Section 8.2.4.

<sup>7</sup> Id. at Section 8.2.1. The per mile charge decreased from \$3.00 to \$1.20 for the 1-50 mileage band and from \$1.39 to \$1.20 for the 51-100 mileage band.

<sup>8</sup> Id.

ARINC and other parties filed petitions for rejection of those tariff revisions.<sup>9</sup> The petitioners argued, inter alia, that AT&T sought to take advantage of ambiguities in the Report and Order to increase rates contrary to the FCC's objectives to protect analog ratepayers and without the cost support or other justification that would otherwise be required for what amounted to an "above cap" increase. As such, they showed AT&T's revisions violated Section 201 of the Communications Act, which requires carriers to establish just and reasonable rates.<sup>10</sup> ARINC demonstrated that if the revisions were permitted to become effective, ratepayers would be forced to pay exorbitant rates for services for which they currently have no competitive alternative.<sup>11</sup> It is the potential for just such abuses that historically underlies users' concerns about the effectiveness of the price cap regime in general.

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<sup>9</sup> AT&T Communications, Transmittal Nos. 3464 and 3465, "Petition for Rejection or, in the Alternative, Suspension and Investigation," filed by Aeronautical Radio, Inc., on Sept. 24, 1991; "Petition for Partial Suspension and Investigation," filed by the Ad Hoc Telecommunications Users Committee, on Sept. 24, 1991; "Petition to Reject or, in the Alternative, Suspend," filed by the American Petroleum Institute, on Sept. 25, 1991.

<sup>10</sup> 47 U.S.C. § 201(b) (1991).

<sup>11</sup> ARINC is transitioning portions of its network to digital services, but must rely extensively upon analog facilities for the remaining portions. Therefore, ARINC will likely be forced to pay the higher rates on most of its network.

AT&T contended that analog services that employ digital interoffice circuits should not be subject to the price cap restrictions retained in the Report and Order.<sup>12</sup> AT&T failed to admit, however, that it had unilaterally transitioned its subscribers from analog to digital interoffice circuits; nor did it acknowledge that users still receive analog transmissions over the analog drops for these circuits. Nevertheless, AT&T maintained that its self-interested actions had deprived users of such circuits of essentially all regulatory protections.

Shortly thereafter, AT&T filed revisions to reduce the rates for terrestrial television circuits that also would remain under price caps in the new analog Basket 3.<sup>13</sup> These filings were intended to satisfy the FCC that the rate increases for multidrop and interoffice channels under Transmittal Nos. 3464 and 3465 were at least partly offset, thereby allegedly meeting the requirements set out in the Report and Order.

The Common Carrier Bureau allowed the rate revisions to become effective with the usual "form order," finding nothing

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<sup>12</sup> AT&T Communications, Transmittal Nos. 3464 and 3465, "Reply," filed Oct. 3, 1991, at 8 & n.\*\*; see also Letter from John J. Langhauser, AT&T, to Donna R. Searcy, FCC, at 2-3 (Oct. 22, 1991) ("AT&T Letter").

<sup>13</sup> AT&T Communications, Transmittal No. 3532, filed October 9, 1991.

patently unlawful with the tariff.<sup>14</sup> The Bureau's Order did not address the 500% increases or explain how these increases were consistent with the policies enunciated in the FCC's Report and Order.

**B. The FCC Should Clarify the Application and Scope of Its Report and Order So As To Protect Analog Users**

AT&T's rate revisions illustrate the need to clarify what rate elements should be included in the modified Basket 3. In its pleadings on Transmittal Nos. 3464 and 3465, AT&T claimed that analog services that employ digital interoffice circuits should not be placed in the new analog Basket 3 established by the Report and Order.<sup>15</sup> AT&T claims that to do so "would make the services subject to continuing price cap regulation dependent not on the nature of the service provided by AT&T (i.e., analog or digital) but on the nature of the customer's terminal equipment."<sup>16</sup>

AT&T's statement is misleading. Although AT&T may employ digital inter-office circuits, it provides analog service to ARINC. AT&T's unilateral decision to transition its interoffice circuits to digital technology to accommodate

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<sup>14</sup> AT&T Communications, Inc., Order, DA 91-1393, released November 7, 1991.

<sup>15</sup> See note 13, supra.

<sup>16</sup> AT&T Letter at 2.



its own business objectives does not change the fact that the ultimate transmissions provided to ARINC and the airlines are analog.

More importantly, AT&T's position ignores the FCC's objective to protect analog ratepayers that subscribe to monopoly services without competitive alternatives. AT&T's claim that there are numerous suppliers of analog multidrop circuits and, thus, that analog users are not captive ratepayers is disingenuous.<sup>17</sup> In fact, the number of viable alternative suppliers is limited. Moreover, no new providers are likely to enter this particular segment of the market, since demand is declining as users transition to digital services. Thus, AT&T remains the dominant provider of analog multidrop services.

Even if numerous suppliers existed, ARINC and other current AT&T customers would not be able to switch easily to those suppliers. The costs and disruptions associated with such forced migration outweigh any perceived countervailing purposes. The costs of transitioning to digital multidrop circuits would total about \$2 million for ARINC alone. The airlines and other users would incur similar costs. Service disruptions would likely occur during such a transition because of the need to coordinate and test changed circuits.

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<sup>17</sup>

Id.

Consequently, the FCC should either clarify or reconsider its Report and Order to include all analog private line rate elements under its new Basket 3, regardless of AT&T's network configuration. Only by such action can the agency establish adequate protections to ensure the proper implementation of its decision to protect analog private line users.

**C.    The FCC Should Establish Service Bands to Prevent Cross-Subsidization and Rate Manipulation in the New Private Line Basket**

As noted above, AT&T apparently has cross-subsidized terrestrial TV circuits by increasing rates for analog multidrop users. Indeed, such action is possible as a result of the FCC's decision not to develop service bands for individual rate elements under its "Voice Grade and Below" category or for the new analog Basket 3.<sup>18</sup> Given the abuses described herein, however, the FCC should reconsider its decision not to require service bands in the new Basket. The manipulation of rates and the strategic pricing that has occurred here -- and which will likely reoccur if not restricted -- should not be tolerated.<sup>19</sup> Accordingly, ARINC

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<sup>18</sup>    Report and Order, at ¶82.

<sup>19</sup>    Indeed, the agency has explicitly restricted such strategic pricing in the past and should do so here. See generally Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166 Phase II, Part 1, FCC

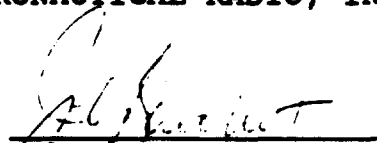
asks that the FCC establish 5% service band requirements for each element in its new analog private line Basket 3.

D. CONCLUSION

For the foregoing reasons, the FCC should clarify and reconsider the Report and Order to ensure the achievement of its goals to prevent monopoly abuse of captive analog service users.

Respectfully submitted,  
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